



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

April 17, 1975

Opinion No. 75- 169

Mr. F. Duane Roberts, Chief Counsel
Kansas Employment Securities Division
Department of Labor
401 Topeka Avenue
Topeka, Kansas 66603

Dear Mr. Roberts:

You have requested an opinion concerning the beginning date of the one (1) year disqualification period specified in K.S.A. 44-706(g) when a claimant makes a false and fraudulent representation in order to increase or receive benefits.

This statute provides in pertinent part:

"For the period of one (1) year beginning with the first day following the last week of unemployment for which he received benefits, or for one (1) year from the date the act was committed, whichever is the later, if he, or another in his behalf with his knowledge, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other employment insurance law administered by the employment security division of the Kansas department of labor." [Emphasis added.]

It should be noted that subsection (g) is one of several ways in which an individual may become disqualified to receive benefits under the unemployment insurance law administered by the Security Division of the Kansas Department of Labor. You have indicated that the particular problem with which you are concerned arises when a claimant disrupts a claim series with intermittent employment. By the time agency personnel make the necessary determinations, the claimant may have had two (2) or three (3) claim series interrupted

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by several employments. In the hypothetical you posed, the unemployed individual made a false or fraudulent representation at some point prior to or within the first claim series, obtained subsequent employment, thereafter, became unemployed again, received benefits, found brief employment, and soon became unemployed again.

Resolution of this particular question requires a thorough examination of subsection (g). A simple reading of the statute reveals that an individual may be disqualified from a receipt of benefits for one of the following two periods:

- (1) for the period of one (1) year beginning with the first day following the last week of unemployment for which he received benefits; or
- (2) for one (1) year from the date the fraudulent act was committed.

The statute provides that which period is to be employed is determined by whichever extends the period the longest.

Relative to the time period beginning with the first day following the last week of unemployment for which benefits are received, there is nothing to indicate the legislature's intent that the false or fraudulent statement made for the purpose of obtaining or increasing the benefits must be made before or during the same claim series. In other words, subsection (g) states that the one (1) year period begins to run from the first day after the last week for which benefits are received if the individual has made false or fraudulent representations in order to receive or increase benefits. The fact an individual obtains intermittent employment which disrupts the claim series in which the false statement occurred is of no consequence. As applied to your hypothetical, a false statement made in order to obtain or increase benefits during the first claim series will be sufficient to curtail benefits during a subsequent claim series preceded by a brief period of employment. Therefore, an individual knowingly making a false statement may have present unemployment benefits curtailed for a period of one (1) year from the time an agency determination is made that the individual has made such a statement during the present or a prior claim series. This is true even if the present claim series is not the one relative to which the false statement was made.

The present K.S.A. 44-706(g) was amended at Chapter 191 of the 1970 Session Laws. The predecessor statute provided that:

"(g) For the period of one (1) year from the date of making any false or fraudulent representation or the withholding of material information for the purpose of obtaining

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benefits contrary to the provisions of this law:
Provided, That any such disqualification may be
appealed from in the same manner as any other dis-
qualification imposed hereunder."

The changes made indicate legislative concern with the limited period of potential culpability based on a limitation period beginning exclusively with the date the false or fraudulent statement was made. The changes are significant to note for purposes here since it manifests the intent to subject the individual to validity for disqualification for the one (1) year period from the first day following the last week for which benefits are received if any time there is an agency determination that this individual has perpetrated a fraud presently or at some time prior in order to obtain or increase unemployment benefits.

This conclusion is further supported by fundamental principles of law relative to criminal or civil actions which are based on some aspect of fraud. It is horn book law in such actions that the statute of limitations does not begin to run until the fraud is discovered. The analogy to this situation is highly appropriate. Once the agency determines a fraud has been committed, the one (1) year period of time begins to run from the first day following the last week for which benefits have been received. More specifically, if there is an agency determination that a fraud has been committed, the one (1) year period will begin to run from the first day following the end of the week in which such a determination is made.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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